

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION**

LARRY D. FRYE,)	
)	
Plaintiff,)	CIVIL ACTION NO. 9:20-CV-3011-JD-
)	MHC
v.)	
)	APPLICATION FOR FEES AND
THE UNITED STATES OF AMERICA,)	EXPENSES
)	
Defendant.)	
)	

NOW COMES Plaintiff, Larry D. Frye, and submits this Application for Fees and Expenses, respectfully showing as follows:

A. INTRODUCTION

1. Plaintiff is Larry D. Frye; defendant is The United States of America.
2. In 2018, Plaintiff was incarcerated in the Bureau of Prisons (“BOP”) at the Federal Correctional Institution (“FCI”) Edgefield, South Carolina. He was injured in a fight with a fellow inmate on August 7, 2018. Plaintiff sued defendant for medical malpractice regarding treatment he received for his injury from health care providers at FCI Edgefield and its affiliated BOP health services clinic pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671 *et seq.* (“FTCA”).
3. On August 25, 2023, after a bench trial, the Clerk entered judgment for Plaintiff in the amount of ninety thousand dollars (“\$90,000.00”), plus post-judgment interest and costs. (Doc. 102).
4. In this Motion, Plaintiff asks the Court for an award of attorney’s fees and expenses.

B. ARGUMENT

5. For a party to recover attorney fees and expenses, it must be considered the prevailing party. 28 U.S.C. § 2412 (b). The prevailing party is the party that succeeds on any significant issue in the litigation, and the success provides some benefit that had been sought by the party. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *see CRST Van Expedited, Inc. v. EEOC*, 446 U.S. 318, 136 S. Ct. 1642, 1654 (2016); *Lefemine v. Wideman*, 568 U.S. 1, 133 S. Ct. 9, 11 (2012). In this case, Plaintiff is the prevailing party because the Court awarded him compensatory damages that were sought in the Complaint, including damages for pain and suffering, and past and future mental anguish. (Order, Doc 102, pgs. 43-45).
6. Larry D. Frye is entitled to an award of reasonable attorneys' fees and expenses under 28 U.S.C. § 2412 (b) because he is the prevailing plaintiff in a suit brought against the United States of America. 28 U.S.C. § 2412 (b) renders the United States liable for attorneys' fees "to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award."
7. With regard to the calculation of attorney's fees, 28 U.S.C. § 2678 provides that "[n]o attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title[.]"
8. Plaintiff therefore moves for an award of fair and reasonable attorneys' fees in the amount of 25% of the judgment, or \$22,500.00, and \$54,614.45 for nontaxable litigation expenses, as established by the affidavit of C. Caleb Connor, Esq, attached as Exhibit 1. Attorney Connor and the law firm of Connor & Connor, LLC invested significant time and money on Mr. Frye's claims, charging the prevailing rate of 25% as a contingency fee in this case.

9. For these reasons, Plaintiff asks the Court to award attorney fees and expenses to him.

This 22nd day of September 2023.

/s/ C. Caleb Connor
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing upon the following counsel of record in this action by electronic filing as follows:

Robert Sneed
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Respectfully submitted this 22nd day of September, 2023.

/s/ C. Caleb Connor
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